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Paper No. 11

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NEW YORK, NY 10112

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DEC 10 2004

OFFICE OF PETITIONS

In re Application of :
Masamichi Ito et al. :
Application No. 09/903,706 : ON PETITION
Filed: July 13, 2001 :
Attorney Docket No. 35.C12551 DI :

This is a decision on the PETITION UNDER 37 C.F.R. § 1.182 TO CORRECT APPLICATION PAPERS IN USPTO FILE, filed July 16, 2003. Applicants petition to replace the application papers in the file of the U.S. Patent and Trademark Office for the above-identified application with the correct application papers.

The petition is DISMISSED.

Any petition not filed within TWO (2) MONTHS of the date of this decision may be dismissed as untimely. See § 1.181(f). This time limit may not be extended pursuant to 37 C.F.R. § 1.136(a).

On July 13, 2001, application papers were deposited in the above-identified application. Among the application papers was a copy of a co-pending application (specification, claims and drawings), which was not marked as a copy.

By Office action mailed June 16, 2003, applicant was advised that "the specification is incorrect." In response, the instant petition was filed, asserting that the Office erroneously switched the copy of the co-pending application with the application papers for the instant application.

A continuation or divisional application may be filed under 35 U.S.C. 111(a) using the procedures set forth in 37 CFR 1.53(b), by providing: (A) a copy of the prior application, including a copy of the signed oath or declaration in such prior application, as filed; (B) a new specification and drawings and a copy of the signed oath or declaration as filed in the prior application provided the new specification and drawings do not contain

any subject matter that would have been new matter in the prior application; or (C) a new specification and drawings and a newly executed oath or declaration provided the new specification and drawings do not contain any subject matter that would have been new matter in the prior application. A review of the application file reveals that it was unclear upon processing of the application papers deposited on July 13, 2001, which option applicants had selected to file the instant divisional application. The copy of the prior application was not labeled as a copy. Consequently, the copy of the prior application was used as the application papers for this application, rather than the accompanying new specification and drawings as intended by applicants.

It is undisputed that a new specification and drawings were among the papers filed on July 13, 2001. To provide applicants' relief, it is requested that applicants submit a true copy of the specification, claims and drawings as applicants intended them to be filed on July 13, 2001, and any Information Disclosure Statement or any other application papers filed on that date. All papers should be properly designated.

Further correspondence with respect to this decision should be addressed as follows:

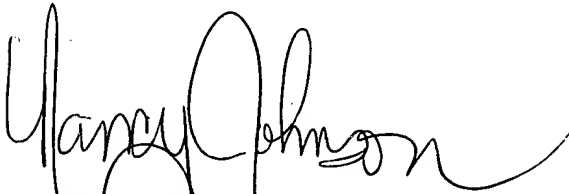
By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (703) 872-9306
 ATTN: NANCY JOHNSON
 SENIOR PETITIONS ATTORNEY

By hand: Effective June 5, 2004, patent correspondence delivered by hand or delivery services, other than the USPS, to the Customer Window must be addressed as follows:

U.S. Patent and Trademark Office
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Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson". The signature is fluid and cursive, with the first name "Nancy" and last name "Johnson" clearly distinguishable.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions